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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

SHERRILL FOSTER, HOWARD FOSTER,
SHEILA BURTON, and MINNIE BURTON,

Plaintiff,

vs.

SHANNON EDMONDS, LORI TYLER,
COUNTY OF LAKE; CITY OF
CLEARLAKE, and DOES 1 through 100,

Defendants

Case No.: C-07-5445 WHA

**DEFENDANTS CITY OF
CLEARLAKE AND COUNTY OF
LAKE'S JOINT MOTION FOR ENTRY
OF A FINAL JUDGMENT PURSUANT
TO F.R.C.P. RULE 54(b);
MEMORANDUM OF POINTS and
AUTHORITIES IN SUPPORT
THEREOF**

**DATE: August 21, 2008
TIME: 8:00 a.m.
CTRM: 9, 19th Floor**

Defendants CITY OF CLEARLAKE and COUNTY OF LAKE (collectively
"Defendants") hereby move this Court for entry of a final judgment in their favor as to
Plaintiffs' SHERRILL FOSTER, HOWARD FOSTER, SHEILA BURTON, and MINNIE
BURTON (hereinafter collectively "Plaintiffs") claims pursuant to Fed.R.Civ.P. 54(b) and
submit the following Memorandum of Points and Authorities in Support Thereof.

I.

INTRODUCTION

On April 10, 2008, Defendants separately moved to dismiss all claims pursuant to F.R.Civ.P Rule 12(b)(6) for failure to state any cognizable claims against them. (Docket Entry Nos. 17 and 19). This Court granted the motions in their entirety on May 23, 2008. (Order dated May 23, 2008, attached as Exhibit A to Request for Judicial Notice ("RJN"); Docket Entry No. 48). In its Order, the Court allowed Plaintiffs fourteen days within which to move for leave to amend. (Id., p. 6:25-27). The court further stated, that "[f]ailing such a motion, judgment will be entered for the city and county." (Id., p. 7:1-2). Plaintiffs have failed to move for leave to amend within the time allowed, or at all. (RJN, ¶ 2). Defendants respectfully requests this Court to now direct the entry of a final judgment in favor of Defendant pursuant to Fed.R.Civ.P. 54(b).

II.

**FINAL JUDGMENT SHOULD BE ENTERED IN FAVOR OF DEFENDANTS
CITY OF CLEARLAKE AND COUNTY OF LAKE**

Rule 54(b) provides, in relevant part, that "[w]hen more than one claim for relief is presented in an action, whether as a claim [or] counterclaim, . . . the court may direct the entry of a final judgment as to one or more but fewer than all of the claims . . . only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment." In order to certify an order as a final judgment, a district court must first determine that it is dealing with a "final judgment" and then must determine there is "no just reason for delay." Curtiss-Wright Corp. v. General Elec. Co., 446 U.S. 1, 8 (1980).

"[I]ssuance of a Rule 54(b) order is a fairly routine act that is reversed only in the rarest instances." James v. Price Stern Sloan, Inc., 283 F.3d 1064, 1068 n.6 (9th Cir. 2002). There are only two requirements for entry of a partial final judgment. First, there must be an "ultimate disposition of an individual claim entered in the course of a multiple claims action." Curtiss-Wright Corp. v. General Elec. Co., 446 U.S. 1, 7 (1980). Second, there must be "no just reason for delay" in entering a final judgment on the claim. Id. at 8. In

determining no just reason for delay, the court should consider “whether, upon any review of the judgment entered under the rule, the appellate court will be required to address legal or factual issues that are similar to those contained in the claims still pending before the trial court.” See Frank Briscoe Co. v. Morrison-Knudsen Co., 776 F.2d 1414, 1416 (9th Cir. 1985); Baker v. Limber, 647 F.2d 912, 916 (9th Cir. 1981) citing Morrison-Knudsen Co., Inc. v. Archer, 655 F.2d 962, 965 (9th Cir. 1981). This is to avoid piecemeal appeals of the same issues. See Gausvik v. Perez, 392 F.3d 1006, 1009 (9th Cir. 2004) citing Sears, Roebuck & Co. v. Mackey, 351 U.S. 427, 438 (1956).

Here, all of Plaintiffs’ claims against Defendants, both public entities, have clearly been disposed of by way of the Order dated May 23, 2008, and the failure of Plaintiffs to seek leave to amend. (See RJN). Accordingly, this court has ruled in favor of the Defendants, and decided “the merits and legitimacy of plaintiff’s assertions” to be insufficient. See e.g. Am. States Ins. Co. v. Dastar Corp., 318 F.3d 881, 888 (9th Cir. 2003) (the district court possess the authority to deny the relief if it did not intend the order to be immediately appealable). Thus, while the claims against private parties Edmonds and Tyler continue to move forward, all claims against Defendants CITY OF CLEARLAKE and COUNTY OF LAKE have been dismissed.

In addition, no just reason exists to insist that Defendants remain in the action. In that regard, the appellate court will not be required to address similar legal or factual issues on appeal. First, only the public entity Defendants moved to dismiss at the early stage of the pleadings. Defendants Edmonds and Tyler did not challenge the pleadings. Thus, any appeal as to Defendants necessarily involve the sufficiency of the pleadings. Equally important, the bases for the claims against Defendants sounded in 42 U.S.C. Section 1983 for municipal liability under Monell v. Department of Social Servs., 436 U.S. 658, 695 (1978), and state law claims subject to California Claims Act. Cal. Gov. Code §§ 900 et seq. These claims are unique to public entities. An appeal of these issues, if any, thus involve separate legal theories and/or pleading requirements than as against the remaining Defendants Shannon and Edmonds, private citizens. As to them, Plaintiffs’ claims essentially sound in negligence and

1 intentional tort not subject to the California Claims Act. Accordingly, there is no risk of
 2 duplicate action and an appeals court will not find it necessary to resolve similar issues.
 3 Therefore, no just reason exists to delay entry of judgment in favor of Defendants.

4 Lastly, entering final judgement in favor of Defendants will help to narrow the issues
 5 and parties before this court. See e.g. Sheehan v. Atlanta International Ins. Co., 812 F.2d
 6 465, 468 (9th Cir. 1987). Defendants respectfully submit final judgment be entered in favor
 7 of Defendants to promote the prompt and final resolution of the claims asserted against
 8 Defendants CITY OF CLEARLAKE and COUNTY OF LAKE. Therefore, the motion for
 9 entry of a final judgment should be granted.

10 IV.

11 CONCLUSION

12 Based on the foregoing, Defendants CITY OF CLEARLAKE and COUNTY OF
 13 LAKE respectfully request the Court find that because all claims of Plaintiffs against
 14 Defendants have been resolved, and there is no just reason for delay, to direct the entry of a
 15 final judgment pursuant to Fed.R.Civ.P. 54(b) as against Plaintiffs and in favor of Defendants
 16 CITY OF CLEARLAKE and COUNTY OF LAKE.

17 Respectfully submitted,

18 Dated: July 8, 2008

PORTER SCOTT
 A PROFESSIONAL CORPORATION

/s/ JOHN R. WHITEFLEET

By _____
 Terence J. Cassidy
 John R. Whitefleet
 Attorney for Defendant
 COUNTY OF LAKE

23 Dated: July 8, 2008

Respectfully Submitted,

LOW, BALL & LYNCH

26 By _____
 Mark F. Hazelwood
 Dirk Donald Larsen
 Attorneys for Defendant
 CITY OF CLEARLAKE

intentional tort not subject to the California Claims Act. Accordingly, there is no risk of duplicate action and an appeals court will not find it necessary to resolve similar issues. Therefore, no just reason exists to delay entry of judgment in favor of Defendants.

Lastly, entering final judgement in favor of Defendants will help to narrow the issues and parties before this court. See e.g. Sheehan v. Atlanta International Ins. Co., 812 F.2d 465, 468 (9th Cir. 1987). Defendants respectfully submit final judgment be entered in favor of Defendants to promote the prompt and final resolution of the claims asserted against Defendants CITY OF CLEARLAKE and COUNTY OF LAKE. Therefore, the motion for entry of a final judgment should be granted.

IV.

CONCLUSION

Based on the foregoing, Defendants CITY OF CLEARLAKE and COUNTY OF LAKE respectfully request the Court find that because all claims of Plaintiffs against Defendants have been resolved, and there is no just reason for delay, to direct the entry of a final judgment pursuant to Fed.R.Civ.P. 54(b) as against Plaintiffs and in favor of Defendants CITY OF CLEARLAKE and COUNTY OF LAKE.

Respectfully submitted,

Dated: July 8, 2008

PORTER SCOTT
A PROFESSIONAL CORPORATION

/s/ JOHN R. WHITEFLEET

By

Terence J. Cassidy
John R. Whitefleet
Attorney for Defendant
COUNTY OF LAKE

Dated: July 8, 2008

Respectfully Submitted,

LOW, BALL & LYNCH

/s/ MARK F. HAZELWOOD

By

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